



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2004

Mr. John Cornelius  
Assistant Criminal District Attorney  
Smith County  
100 North Broadway  
Tyler, Texas 75702

OR2004-6602

Dear Mr. Cornelius:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206616.

The Smith County Sheriff's Office (the "sheriff") received a request for information pertaining to a stop, search, and seizure of property involving two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Because you contend that the submitted information is excepted in its entirety under section 552.103 of the Government Code, we first address your claim under that exception. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You indicate that the information at issue relates to “potential criminal cases” that have been referred to the district attorney “for potential presentation to a grand jury.” We note that the sheriff is not the prosecuting entity in such “potential criminal cases” and thus is not a party to potential criminal litigation concerning the individuals at issue. Consequently, the sheriff has no litigation interest with respect to the submitted information. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). While you make reference to section 552.103(b), we note that that section provides that a governmental body *with a criminal litigation interest* is considered to be a party to criminal litigation until the statute of limitations has expired or the defendant has exhausted all postconviction remedies. *See* Gov't Code § 552.103(b). Thus, we find that section 552.103(b) is inapposite because the sheriff has no criminal litigation interest in the information at issue.

In this type of situation we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the submitted information withheld from disclosure under section 552.103. In this case, we have not received an affirmative representation from a governmental body with a litigation interest, such as an entity prosecuting the “potential criminal cases” at issue, that such entity wants to withhold the information under section 552.103. Thus, we find you have failed to establish that section 552.103 is applicable on the basis of the litigation interest of a party to pending or anticipated criminal litigation. Furthermore, while you state that a notice of forfeiture was filed prior to the date the sheriff received the present request, you have not established that litigation on this matter is pending or reasonably anticipated. We therefore find you have failed to meet your burden of establishing that section 552.103 is applicable, and we determine that the sheriff may not withhold any portion of the submitted information under section 552.103.

You also contend that the information submitted as Exhibit C is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a), (b). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the "potential criminal cases" at issue "are still in the investigation stage." We understand you to represent that the information in Exhibit C pertains to a pending criminal investigation. Based on this representation and our review, we determine that the release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore find that section 552.108(a)(1) is applicable to Exhibit C.<sup>1</sup>

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff may withhold Exhibit C from disclosure pursuant to section 552.108(a)(1). We note that the sheriff has the discretion to release all or part of the remaining information in Exhibit C that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we note that Exhibit D contains information that may be excepted under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

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<sup>1</sup> Based on this finding, we need not reach your claim under section 552.108(b).

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Exhibit D contains a vehicle identification number. However, it is not apparent from the submitted documents whether the vehicle at issue is subject to a Texas title or registration. Accordingly, if the sheriff determines that the vehicle identification number pertains to a Texas motor vehicle title or registration, the sheriff must withhold the vehicle identification number in Exhibit D pursuant to section 552.130 of the Government Code. Otherwise, the sheriff must release this information to the requestor.

In summary, with the exception of basic information which must be released, the sheriff may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code. If the vehicle identification number in Exhibit D pertains to a Texas motor vehicle title or registration, the sheriff must withhold the vehicle identification number under section 552.130 of the Government Code. Otherwise, it must be released. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 206616

Enc: Submitted documents

c: Mr. Alonzo Ramos, P.C.  
Attorney at Law  
1102 Scott Street, Suite 5B  
Laredo, Texas 78040  
(w/o enclosures)